

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Lassen)

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL DYLAN HALEY,

Defendant and Appellant.

C095475

(Super. Ct. No. CR011634)

This appeal comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

On September 4, 1997, a jury found defendant Gabriel Dylan Haley guilty of first degree murder and found true the special allegation he intentionally killed the victim while lying in wait. On September 25, 2000, we affirmed defendant's conviction. (*People v. Ladner* (Sept. 25, 2000, C027881) [nonpub. opn.])

On September 9, 2021, defendant filed a form petition for resentencing under Penal Code former section 1170.95 alleging he was convicted of murder pursuant to the

felony-murder rule or the natural and probable consequences doctrine and could not now be convicted of murder due to changes made to Penal Code sections 188 and 189, effective January 1, 2019.

On October 18, 2021, the trial court denied defendant's petition by written order stating defendant "was not convicted under a theory of felony-murder of any degree, or a theory of natural and probable consequences."

Defendant appealed the trial court's order denying his petition.

Appointed counsel for defendant asked this court to independently review the record pursuant to *Wende*. Defendant was advised by counsel of the right to file a supplemental brief within 30 days. Defendant did not file a supplemental brief.

DISCUSSION

Review pursuant to *Wende* or its federal constitutional counterpart *Anders v. California* (1967) 386 U.S. 738 is required only in the first appeal of right from a criminal conviction. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 555; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 536-537; *People v. Serrano* (2012) 211 Cal.App.4th 496, 500-501.)

California's "*Wende* procedure" does not apply to appeals such as this one, which is from a denial of postconviction relief. (*People v. Weisner* (2022) 77 Cal.App.5th 1072, 1079, review granted July 13, 2022, S274617; *People v. Figueras* (2021) 61 Cal.App.5th 108, review granted May 12, 2021, S267870; *People v. Flores* (2020) 54 Cal.App.5th 266; *People v. Cole* (2020) 52 Cal.App.5th 1023, review granted Oct. 14, 2020, S264278.) This is so because this is not the defendant's first appeal as of right. (See *In re Sade C.* (1996) 13 Cal.4th 952, 986 [*Wende/Anders* review "mandated for only one [situation]—the indigent criminal defendant in his first appeal as of right"].)

We thus have before us a standard appeal from an order denying postconviction relief in which the defendant, through counsel, has stated that there are no issues that properly can be raised on appeal. Under these circumstances, we consider the appeal abandoned and order the appeal dismissed.

The question of whether, and to what extent, these “*Wende* procedures” extend to appeals such as this one from orders denying postconviction relief is currently pending before our Supreme Court. (See *People v. Delgadillo* (Nov. 18, 2020, B304441) [nonpub. opn.], review granted Feb. 17, 2021, S266305.) Until the Supreme Court has provided an answer, appeals such as the one presently before us must be considered abandoned and ordered dismissed.

DISPOSITION

The appeal is dismissed.

HULL, J.

We concur:

ROBIE, Acting P. J.

DUARTE, J.